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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/667,862  
Filing Date: September 23, 2003  
Appellant(s): WECHTER ET AL.

\_\_\_\_\_  
Gabriel Wechter et al.  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 11/17/2008 appealing from the Office action mailed 06/17/2008.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

No amendment after final has been filed.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

7,143,153

Black et al.

11-2006

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. Claims 1-27 are rejected under 35 U.S.C. 102(e) as being anticipated by Black et al. (Black) (US Patent # 7,143,153).
2. Regarding to claim 1, Black discloses a method of determining a network management scalability threshold of a network manager with respect to a network (see abstract, col. 2, lines 24-36), comprising: gathering information about the network (see col. 45, lines 5-13; monitoring information about network); gathering information about the network manager (see col. 1, lines 35-50); and determining a maximum size threshold of a zone in the network based on the gathered network information and the gathered network manager information (see col. 4, lines 1-20).
3. Regarding to claim 2, Black discloses the method of Claim 1, wherein: the information about the network manager includes an amount of memory available to the network manager (see abstract, col. 2, lines 24-30); and the determining includes assigning a value to the maximum size threshold of a zone in the network based on the amount of memory available to the network manager (see col. 4, lines 1-20).
4. Regarding to claim 3, Black discloses the method of Claim 2, wherein: the information about the network includes a number of each type of node in the network,

and a ratio of switches to other types of nodes in the network (see col. 39, lines 7-15); and the determining includes decreasing the maximum size threshold of a zone in the network if the ratio of switches to other types of nodes in the network exceeds a first threshold, and increasing the maximum size threshold of a zone in the network if the ratio of switches to other types of nodes in the network is below a second threshold (see col. 4, lines 1-20).

5. Regarding to claim 4, Black discloses the method of Claim 3, wherein: the information about the network includes a total number of connections between each switch in the network and other nodes in the network, and a ratio of a) the total number of connections to b) a number of nodes in the network (see col. 39, lines 7-15); and the determining includes decreasing the maximum size threshold of a zone in the network if the ratio of the total number of connections to nodes exceeds a third threshold, and increasing the maximum size threshold of a zone in the network if the ratio of the total number of connections to the number of nodes in the network is below a fourth threshold (see col. 1, lines 34-50, see col. 4, lines 1-20).

6. Regarding to claim 5, Black discloses the method of Claim 4, wherein the number of connections is a number of connections between the switches in the network and other nodes in the network (see col. 369, lines 10-20).

7. Regarding to claim 6, Black discloses the method of Claim 4, wherein: the information about the network includes a number of interfaces in the network, and a ratio of a) interfaces in the network to b) nodes in the network (see col. 39, lines 7-15); and the determining includes decreasing the maximum size threshold of a zone in the

network if the ratio of interfaces to nodes equals or exceeds a fifth threshold, and increasing the maximum size threshold of a zone in the network if the ratio of interfaces to nodes in the network is below a sixth threshold (see col. 1, lines 34-50, see col. 4, lines 1-20).

8. Regarding to claim 7, Black discloses the method of Claim 6, wherein the fifth and sixth thresholds are the same, the first threshold is greater than the second threshold, and the third threshold is greater than the fourth threshold (see col. 2, lines 48-67).

9. Regarding to claim 8, Black discloses the method of Claim 1, wherein the network is a zone candidate or subset of a larger network and includes specific nodes (col. 1, lines 51-60).

10. Regarding to claim 9, Black discloses the method of Claim 1, comprising preventing the network manager from discovering or managing a zone of the network having a size exceeding the determined maximum size threshold (see col. 9, lines 44-48).

11. Regarding to claim 10, Black discloses a system for determining a network management scalability threshold of a network manager with respect to a network (see abstract, col. 2, lines 24-36), comprising: means for gathering information about the network (see col. 45, lines 5-13; monitoring information about network), gathering information about the network manager (see col. 1, lines 35-50), and determining a maximum size threshold of a zone in the network based on the gathered network

information and the gathered network manager information; and means for connecting the network manager to the network (see col. 4, lines 1-20).

12. Regarding to claim 11, the limitations of this claim has already been addressed (see claim 2 above).

13. Regarding to claim 12, the limitations of this claim has already been addressed (see claim 3 above).

14. Regarding to claim 13, the limitations of this claim has already been addressed (see claim 4 above).

15. Regarding to claim 14, the limitations of this claim has already been addressed (see claim 5 above).

16. Regarding to claim 15, the limitations of this claim has already been addressed (see claim 6 above).

17. Regarding to claim 16, the limitations of this claim has already been addressed (see claim 7 above).

18. Regarding to claim 17, the limitations of this claim has already been addressed (see claim 8 above).

19. Regarding to claim 18, the limitations of this claim has already been addressed (see claim 9 above).

20. Regarding to claim 19, Black discloses a machine readable medium comprising a computer program for causing a computer to perform (see col. 6, lines 46-56): gathering information about a network (see col. 45, lines 5-13; monitoring information about network); gathering information about a network manager arranged to monitor the

network (see col. 1, lines 35-50); and determining a maximum size threshold of a zone in the network based on the gathered network information and the gathered network manager software program information (see col. 4, lines 1-20).

21. Regarding to claim 20, the limitations of this claim has already been addressed (see claim 2 above).

22. Regarding to claim 21, the limitations of this claim has already been addressed (see claim 3 above).

23. Regarding to claim 22, the limitations of this claim has already been addressed (see claim 4 above).

24. Regarding to claim 23, the limitations of this claim has already been addressed (see claim 5 above).

25. Regarding to claim 24, the limitations of this claim has already been addressed (see claim 6 above).

26. Regarding to claim 25, the limitations of this claim has already been addressed (see claim 7 above).

27. Regarding to claim 26, the limitations of this claim has already been addressed (see claim 8 above).

28. Regarding to claim 27, the limitations of this claim has already been addressed (see claim 9 above).

**(10) Response to Argument**

***Information Disclosure Statement***



29. The information disclosure statement (IDS) submitted on 11/18/2008 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

**Appellant argues claims 1, 10, and 19**

30. On page 4-6 of Appellant's Appeal Brief, Appellant argues that Black does not teach or suggest, "gathering information about the network manager; and determining a maximum size threshold of a zone in the network based on . . . the gathered network manager information". These arguments are not deemed persuasive.

In response to Appellant's arguments, the examiner respectfully would like to clarify that Black does teach or suggest, "gathering information about the network manager (see col. 1, lines 35-50, col. 63, lines 29-48, figure 13b and the text associated, col. 7, lines 13-43, col. 12, lines 1-28, col. 67, lines 40-67, col. 68, lines 1-8; wherein a modular software architecture, the applications themselves gather necessary information (i.e., metadata and instance data) from a variety of sources, for example, text files, JAVA class files and database views, which may be provided at run time or through the logical system model and a network manager selectively configures certain of the applications and gathering data related to UDS and further more each NMS server gathers the name, IP address and status of other NMS servers in the telecommunication network, determines the number of NMS clients and network devices to which it is connected, tracks its own operation time, the number of transactions it has handled since initialization, determines the "top talkers" (i.e., network devices associated with high numbers of transactions with the server), and the

number of communications errors it has experienced); and determining a maximum size threshold of a zone in the network based on . . . the gathered network manager information (see col. 1, lines 65-67, col. 2, lines 1-20, col. 4, lines 1-20, col. 67, lines 40-66; wherein a systems monitor the predetermined resource attributes for a certain initial period of time and then automatically set the threshold values based on the data gathered during that initial period etc.)". Thus it is the Examiner's position that the rejection to claims 1, 10, and 19 and there dependent claims is proper for the given reasons above. Appellant does not provide any other arguments that distinguish over the reference of Black, therefore the present rejection should be affirmed.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Umar Cheema/

Examiner, Art Unit 2444

/William C. Vaughn, Jr./

Supervisory Patent Examiner, Art Unit 2444

Conferees:

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